UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25
SUBREGION 33

SPRINGFIELD URBAN LEAGUE, INC.

and **Case 25-CA-248142**
25-CA-248144
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME), COUNCIL 31, AFL-CIO **25-CA-258335**

RESPONDENT'S REPLY TO CHARGING PARTY'S RESPONSE IN OPPOSITION TO MOTION FOR PARTIAL DISMISSAL OF THE COMPLAINT

COMES NOW, the Respondent, SPRINGFIELD URBAN LEAGUE, INC., by and through its attorneys, Giffin, Winning, Cohen & Bodewes, P.C., and for its Reply to Charging Party's Response in Opposition to Motion for Partial Dismissal of the Complaint states as follows:

1. Paragraphs 7 (a)-(c) of the Consolidated Complaint[1] allege that on July 31, 2019, Respondent subcontracted work at Respondent's Jacksonville, Illinois site to a subcontractor without bargaining with the Charging Party. In Respondent's *Motion for Partial Dismissal of the Complaint,* Respondent attached a Resolution executed in January 2017 which addresses the subcontracting matter in Jacksonville, Illinois. In the *Charging Party's Response in Opposition to Motion for Partial Dismissal of the Complaint* ("Response"), the Charging Party does not dispute the existence or contents of the Resolution. The Charging Party was on notice of the Jacksonville, Illinois subcontracting in at least January 2017. Therefore, the allegations and charges related to

[1] On January 15, 2021, subsequent to the filing of Respondent's Motion, the Regional Director issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing adding allegations based on a third charge. The Complaint allegations that are the subject of the Motion remain unchanged.

the subcontracting, Paragraphs 7(a)-(c) of the Consolidated Complaint and a portion of Paragraph 10, should be dismissed for untimeliness.

2. NLRB Rule §102.15(b) states a complaint will contain:

> A clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of Respondent's agents or other representatives who committed the acts.

3. The complaint must be sufficient to put the respondent on notice of the allegations to put on his defense. *NLRB v. Piqua Munising Wood Prods. Co.*, 109 F.2d 552, 557 (6th Cir. 1940).

4. When ruling on a motion to dismiss, the judge should "construe the complaint in the light most favorable to the General Counsel, accept all factual *allegations* as true, and determine whether the General Counsel can prove any set of facts in support of his claims that would entitle him to relief. *Emphasis added. Detroit Newspapers Agency*, 330 NLRB 524, 525 n. 7 (2000).

5. The Charging Party's Response includes facts not alleged in the Consolidated Complaint. Specifically, Paragraphs 9 and 10 of the Response state that Cassondra Bacon agreed to "TA" a proposal and subsequently withdrew the "TA". These "facts" were not specifically alleged in the Charge nor were they alleged in the Consolidated Complaint.

6. The Respondent must be aware of the facts to put on a meaningful defense. Allowing the Charging Party to allege facts in a motion to dismiss and take the same as true violates due process and ignores the purpose of a complaint, which is to put the Respondent on notice of the allegations to put on a meaningful defense. *See Piqua Munising Wood Prods.*, 109 F.2d 552, 557 (6th Cir. 1940). The Charging Party may not be permitted to raise any new or additional facts,

which are not well-pled allegations, to state a claim or defeat an otherwise proper defense on allegations contained in the complaint.

7. Therefore, the additional facts raised by the Charging Party's Response should not be considered in determining whether the allegations in the Initial Charge in Case 25-CA-248144 are closely related to the Amended Charge Case 25-CA-248144 and subsequent Consolidated Complaint.

8. Further, in addressing the closely related test, the Charging Party seems to confuse the difference between a purely Section 8(a)(1) unfair labor practice and a Section 8(a)(5) unfair labor practice, which includes a derivative Section 8(a)(1) unfair labor practice.

9. The first prong of the closely related test requires the otherwise untimely allegations to have the same legal theory as the allegations in the timely charge. *Redd-I, Inc.*, 290 NLRB 1115 (1988). The third, non-mandatory prong of the closely related test looks at the similarity of defenses between the untimely and timely charge allegations. *Id*.

10. Section 8(a)(1) makes it an unfair labor practice for an employer to "interfere with, restrain, or coerce employees" who exercise their rights under Section 7 of the NLRA. An employer's adverse action is a Section 8(a)(1) unfair labor practice if (1) the employer knew of the concerted nature of the employee's activity; (2) the concerted action was protected under Section 7; and (3) the employer's adverse action was because of, or motivated by the protected concerted activity. *Reef Indus., Inc. v. N.L.R.B.*, 952 F.2d 830, 835–36 (5th Cir. 1991).

11. An employer charged with a Section 8(a)(5) unfair labor practice is necessarily charged derivatively with a Section 8(a)(1) unfair labor practice. *NLRB v. Ingredion Inc.*, 930 F.3d 509, 513 (D.C. Cir. 2019). However, the requirements to prove a Section 8(a)(5) unfair labor practice is different from a standalone Section 8(a)(1) violation; "The Board will find that an

employer has violated its duty to bargain under § 8(a)(5) of the Act if the employer has failed to bargain in good faith with a union, or if it has engaged in a per se violation of its duty to bargain, regardless of its good faith." *Frankl v. HTH Corp.*, 650 F.3d 1334, 1358 (9th Cir. 2011). *Internal citations omitted.*

12. The two types of unfair labor practices are separate legal theories and require separate and different defenses. The Initial Charge in Case 25-CA-248144 alleged a failure to bargain in good faith. The Amended Charge in Case 25-CA-248144 and subsequent Consolidated Complaint alleged a violation of the employee's protected concerted activity. Therefore, the Initial Charge in Case 25-CA-248144 and the Amended Charge in Case 25-CA-248144 upon which the Consolidated Complaint is based are not closely related.

13. Additionally, if the Initial Charge Case 25-CA-248144 in fact already encompassed the allegations in the Complaint, there would be no need for the Initial Charge to be amended. The act of amending the Initial Charge in Case 25-CA-248144 is evidence itself that the Initial Charge did not sufficiently include the act by Cassondra Bacon put forth in the Charging Party's Response and is necessarily not closely related to the allegations in the Consolidated Complaint.

14. Therefore, the allegations and charges related to the modification of a proposal as a Section 8(a)(1) unfair labor practice, Paragraphs 5 and 9 of the Consolidated Complaint, should be dismissed for untimeliness.

15. The Charging Party's Response does not raise an objection to the postponement of the hearing to resolve the *Motion for Partial Dismissal of the Complaint*. *See* NLRB Rule §102.24(b).

WHEREFORE, the Respondent, Springfield Urban League, Inc., respectfully requests the Board grant the Respondent's Motion for Partial Dismissal of the Complaint in its favor.

Respectfully Submitted,

SPRINGFIELD URBAN LEAGUE, INC., Respondent

By: _____
One of Its Attorneys

Dated: January 26, 2021

Attorneys for Respondent
Samantha A. Bobor, Reg. No. 6320557
sbobor@giffinwinning.com
Jason Brokaw, Reg. No. 6305541
jbrokaw@giffinwinning.com
Giffin, Winning, Cohen & Bodewes, P.C.
1 W. Old State Capitol Plaza
Myers Building, Suite 600
Springfield, IL 62701
(217) 525-1571

CERTIFICATE OF SERVICE

Samantha A. Bobor, an attorney, hereby certifies that on January 26, 2021, she caused a copy of the foregoing *Respondent's Reply to Charging Party's Response in Opposition to Motion for Partial Dismissal of the Complaint* to be served by email on the following:

Patricia K. Nachand, Regional Director
Patricia.nachand@nlrb.gov
Regional Director
NATIONAL LABOR RELATIONS BOARD
REGION 25/SUBREGION 33
101 SW Adams St.
Suite 400
Peoria, IL 61602

Raifael Williams, Attorney
Raifael.williams@nlrb.gov
National Labor Relations Board
Region 25
Minton-Capehart Federal Building, Room 238
575 North Pennsylvania Street
Indianapolis, IN 46204

Melissa Auerbach, Attorney
mauerbach@laboradvocates.com
DOWD, BLOCH, BENNETT, CERVONE,
AUERBACH & YOKICH
8 S Michigan Ave Fl 19
Chicago, IL 60603-3357

/s/ Samantha A. Bobor
Samantha A. Bobor